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Board (PERB)

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6-22-1987

## State of New York Public Employment Relations Board Decisions from June 22, 1987

New York State Public Employment Relations Board

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# State of New York Public Employment Relations Board Decisions from June 22, 1987

**Keywords**

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

**Comments**

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
UNITED UNIVERSITY PROFESSIONS,  
Respondent,

-and-

CASE NO. U-9348

THOMAS C. BARRY,  
Charging Party.

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THOMAS C. BARRY, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Thomas C. Barry (Barry) to the decision of the Director dismissing his improper practice charge against the United University Professions (UUP) on the ground that the issue raised in the charge had previously been litigated between the parties and is a subject of the decision of an Administrative Law Judge (ALJ) which is on appeal to the Board (Case U-8347). The charge challenged the requirement of UUP's 1985-86 agency shop fee rebate procedure that appeals from the amount of the final agency shop fee refund determination must be filed by certified or registered mail.

In his exceptions, Barry not only challenges the merits of the Director's decision but also moves for an order of the Board enjoining UUP from enforcing the requirement that appeals be filed by certified or registered mail in the

ongoing 1985-86 appeal procedure. As to the merits, Barry argues that the instant improper practice charge relates to a new UUP procedure for 1985-86, a procedure which was amended by UUP in December of 1986. He claims, therefore, that his charge challenges provisions that did not exist at the time of the ALJ's decision in Case U-8347.

As to Barry's request for interim relief, he states that UUP has not accepted his appeal from UUP's 1985-86 refund determination because his appeal was not sent by certified mail, although it was received and acknowledged by UUP. Barry asserts that he is being prevented from participating in the appeal by virtue of a requirement that the ALJ has found improper. He asserts that his rights will be irreparably injured unless the Board directs UUP to accept his appeal pending resolution of the issues in Case U-8347. Although given an opportunity to respond to Barry's exceptions and motion, UUP advises that it does not wish to file a brief or participate at this stage of the proceeding.

#### DISCUSSION

The basis for Barry's motion is inconsistent with his appeal on the merits of the Director's decision. He claims a right to interim relief by virtue of the fact that the ALJ has determined in Case U-8347 that the requirement that appeals be filed by certified or registered mail is coercive. At the same time he asserts that the question presented by the instant charge is different from the one

already litigated in the other case. It is clear, however, that the issue raised relates to the ongoing requirement of UUP's procedures that appeals be filed by certified or registered mail. The change in the 1985-86 procedure eliminated one step of the appeal procedure, now permitting an appeal directly to the neutral, but the certified or registered mail requirement continued. The Director, therefore, was correct in concluding that the issue raised by this charge is presently pending before the Board and should not be litigated anew in this proceeding.

Barry's request for interim relief cannot be granted. First, it is not clear that we have authority to grant such relief.<sup>1/</sup> Second, inasmuch as the charge herein must be dismissed, interim relief would be inappropriate. Finally, denial of interim relief will not cause irreparable harm. We presently have under consideration appeals in Case Nos. U-8347, U-8664, U-8795 and U-8890, in which the propriety of UUP's certified or registered mail requirement is in issue. If we determine that such requirement is coercive and unnecessary, the continuing enforcement of that requirement by UUP in the presently ongoing refund appellate procedure will require us to consider whether appropriate


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<sup>1/</sup>See CSEA, Inc. v. Helsby, 21 N.Y.2d 541, 1 PERB ¶702 (1968).

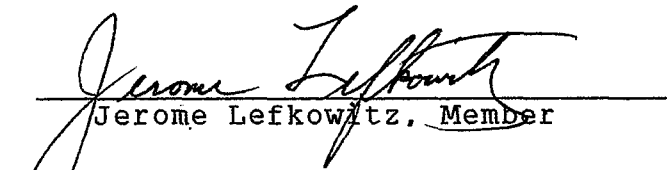
affirmative relief is warranted. Such relief could consist of a direction that UUP accept Barry's appeal from UUP's 1985-86 agency shop fee refund determination.

NOW, THEREFORE, WE ORDER that the charge herein be, and it hereby is, dismissed.

DATED: June 22, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
VILLAGE OF ELMSFORD,

-and- Employer,

CASE NO. C-3134

~~ELMSFORD POLICE ASSOCIATION,~~

-and- Petitioner,

UNITED FEDERATION OF POLICE,

Intervenor.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

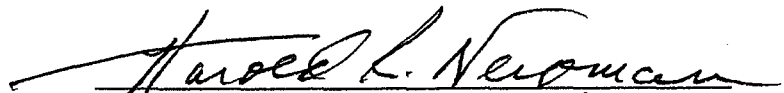
IT IS HEREBY CERTIFIED that the Elmsford Police Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All police officers, lieutenants, and sergeants employed by the Village of Elmsford.

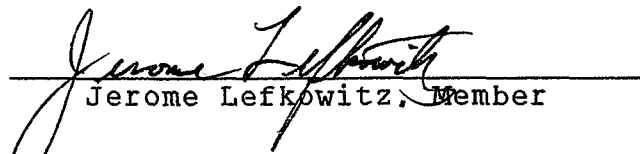
Excluded: Chief of Police and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Elmsford Police Association. To negotiate collectively is the performance of their mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question rising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 22, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

WORCESTER CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-3145

WORCESTER CENTRAL SCHOOL NON-TEACHING  
PERSONNEL,

Petitioner,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC.,

Intervenor.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

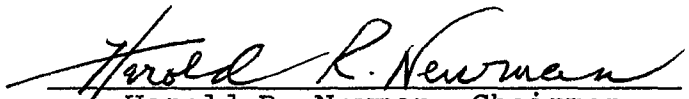
IT IS HEREBY CERTIFIED that the Worcester Central School Non-Teaching Personnel has been designated and selected by a majority of the employees of the above-named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

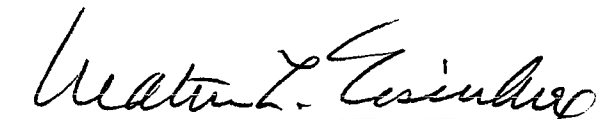
Unit: Included: All non-teaching personnel including Cafeteria Manager, Cafeteria Cook, Cafeteria Helpers, Custodians, Aides, School Nurse, and Bus Drivers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Worcester Central School Non-Teaching Personnel. To negotiate collectively is the performance of their mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question rising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 22, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

TOWN OF NEW HAVEN (HIGHWAY DEPARTMENT),

Employer,

-and-

CASE NO. C-3178

~~TEAMSTERS LOCAL 317, affiliated with the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA,~~

Petitioner,

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BOARD DECISION AND ORDER

On December 11, 1986, Teamsters Local 317, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Town of New Haven (Highway Department) (Employer).

Thereafter, the parties agreed to a negotiating unit as follows:

Included: All full-time Motor Equipment  
Operators in the Highway Department.

Excluded: All other employees.

On February 6, 1987, the Director of Public Employment Practices and Representation (Director) issued a decision in which he found that the Petitioner met the requirements of §201.9(g)(1) of our Rules of Procedure for certification without an election.<sup>1/</sup> The

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<sup>1/</sup> 20 PERB ¶4013 (1987).

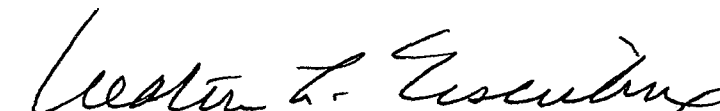
Employer filed exceptions to that decision and submitted information indicating that the Petitioner might no longer meet the requirements for certification without election. Based thereon, by decision and order dated April 7, 1987, we remanded the matter to the Director for the purpose of conducting an election.<sup>2/</sup>


Thereafter, on May 27, 1987, a secret-ballot election was held in which all three ballots which were cast were cast against representation by the Petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the Petitioner, IT IS ORDERED that the petition should be, and hereby is, dismissed.

DATED: June 22, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

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<sup>2/</sup> 20 PERB ¶3015 (1987).

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

WILLIAMSVILLE CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-3184

WILLIAMSVILLE TEACHERS ASSOCIATION,  
NYSUT/AFT/AFL-CIO,

Petitioner.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,


IT IS HEREBY CERTIFIED that the Williamsville Teachers Association, NYSUT/AFT/AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All persons holding the position of  
Registered Professional Nurse (School).

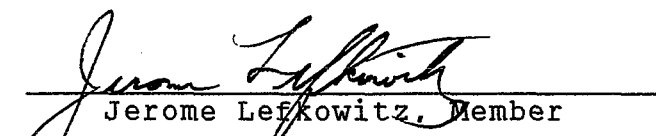
Excluded: All other employees of the District.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Williamsville Teachers Association, NYSUT/AFT/AFL-CIO. To negotiate collectively is the performance of their mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question rising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 22, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of  
VILLAGE OF PAWLING,

Employer,

-and-

CASE NO. C-3193

COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 1120, AFL-CIO,

Petitioner.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Communications Workers of America, Local 1120, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

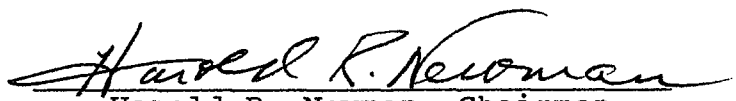
Unit: Included: All laborers in the Department of  
Public Works.

Excluded: All Supervisors.

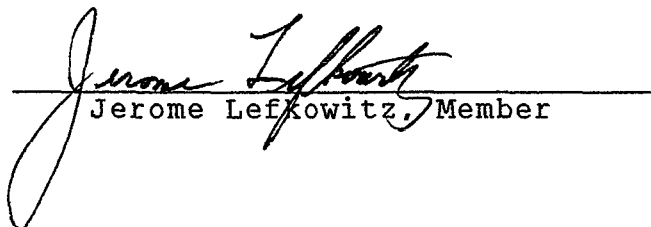
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FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Communications Workers of America, Local 1120, AFL-CIO. To negotiate collectively is the performance of their mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question rising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 22, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of

SCARSDALE UNION FREE SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-3202

MANAGERS AND DISTRICT SERVICES  
ASSOCIATION, SCHOOL ADMINISTRATORS  
ASSOCIATION OF NEW YORK STATE,

Petitioner.

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CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

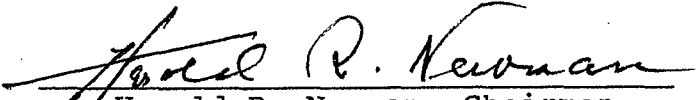
IT IS HEREBY CERTIFIED that the Managers and District Services Association, School Administrators Association of New York State has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Assistant Computer Center Manager;  
Audio-Visual Technican; Computer  
Center Manager; District Audio-Visual  
Supervisor; Finance Officer; Plant  
Manager; Purchasing-Transportation  
Officer; Audio-Visual Assistant.

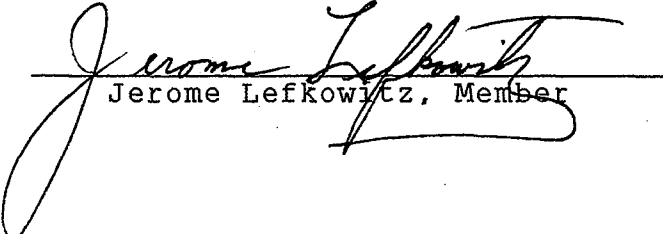
Excluded: Administrative Assistant and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Managers and District Services Association, School Administrators Association of New York State. To negotiate collectively is the performance of their mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question rising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 22, 1987  
Albany, New York

  
Harold R. Newman, Chairman

  
Walter L. Eisenberg, Member

  
Jerome Lefkowitz, Member